

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

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WARREN VINCENT LEE,

Plaintiff,

vs.

GRADY COUNTY DETENTION
CENTER et al.,

Defendants.

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ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W. H. DEPUTY

No. CIV-07-773-W

ORDER

On February 6, 2006, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter and recommended that defendant Grady County Detention Center ("GCDC") be dismissed with prejudice. Plaintiff Warren Vincent Lee was advised of his right to object, and the matter now comes before the Court on Lee's Objections to the Report and Recommendation.

Upon de novo review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of this matter. In his amended complaint file-stamped January 24, 2008,¹ Lee did not name GCDC as a party defendant.² To the extent, however, that Lee intended to proceed against GCDC despite the omission of GCDC's

¹The Clerk of the Court filed a pleading entitled "Amended Complaint" on January 3, 2008 [Doc. 36]. Because that document was not on the proper form, Magistrate Judge Purcell on January 4, 2008, directed Lee to file his amended complaint on the proper form [Doc. 38].

²Lee named as defendants in his amended complaint certain individuals who on February 5, 2008, "appear[ed] specially." Defendants' Special Appearance to Reply to Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss (February 5, 2008). See also Defendants' Motion to Dismiss (November 19, 2007). Rule 12, F.R.Civ.P., abolished the distinction between general and special appearances in 1938, and these labels have no legal significance. Because the "technical distinctions between general and special appearances have been abolished, . . . no end is accomplished by retaining [or using] those terms in federal practice." 5B C. Wright and A. Miller, Federal Practice and Procedure § 1344, at 30 (3d ed. 2004)(footnote omitted).

name from the caption of the amended complaint,³ the Court has considered GCDC's Motion to Dismiss and finds that because GCDC has no separate legal identity under Oklahoma law and is not a suable entity, GCDC is entitled to dismissal with prejudice.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation issued on February 6, 2006;

(2) GRANTS GCDC's Motion to Dismiss [Doc. 23] filed on November 19, 2007;

(3) DISMISSES GCDC from this lawsuit with prejudice pursuant to Rule 12(b)(6), F.R.Civ.P., and 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B); and

(4) RE-REFERS this matter to Magistrate Judge Purcell for further proceedings.

ENTERED this 4th day of March, 2008.



LEE R. WEST
UNITED STATES DISTRICT JUDGE

³See Plaintiff's Objections to the Report and Recommendation at 4.